IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21-11-2007

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

WP Nos.2249, 10807, 17550 and 25608 of 2006 and
8987, 8988 and 9185 of 2007
and
WPMP Nos.2542/2006 and 2303/2007 in WP 2249/2006,
MP No.5 of 2007 in WP 25608/2006 and
MP Nos.1 and 1 of 2007 in WP 8987 and 8988/2007

1.G.Murugan
2.P.Rajendran
3.R.Pandian
4.R.Yogalingam
5.K.Pappu
6.V.Subramanian
7.M.Janarthanam
8.N.Perumal
9.P.Shanmugam .. Petitioners in
WP 2249/2006

R.Shanmugam .. Petitioner in
WP 10807/2006

Tamil Nadu Multipurpose Health
Assistants Welfare Association
rep. By its President
P.Nallathambi
No.4/21, South Boag Road
T.Nagar, Madras 600 017. .. Petitioner in
WP No.17550/2006

V.Vedapuri .. Petitioner in
WP 25608/2006

1.S.Chandrababu
2.M.Chenchaiah
3.N.Ramakrishnan
4.M.Ranganathan
5.R.Devendran
6.M.Jayabalan
7.A.Chanbasha
8.V.Loganathan
9.P.Bhaskaran
10.J.Sardarkhan
11.M.Arunachalam
12.S.Srinivasan
13.V.K.Damodaran
14.H.Sheifullah Khan .. Petitioners in
WP 8987/2007

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1.L.Rajakumaran
2.K.Subbaiyan
3.P.Ganesan .. Petitioners in WP 8988/2007

S.Krishnamurthy .. Petitioner in WP 9185/2007

vs

1.Government of Tamil Nadu
rep. By Secretary to Government
Health and Family Welfare Department
Fort St. George, Chennai 600 009.
2.The Director of Public Health and Preventive Medicine
DMS Compound
Chennai 600 006. .. Respondents 1 and 2 in all WPs

3.Tamil Nadu Health Inspectors Union
rep. By State President and Secretary
(1)S.Gurusamy Pandian - President
(2)M.Murugan - Secretary
(R3 impleaded as per order in MA No.4319/96) .. 3rd respondent in WP 17550/2006

4.R.Jagadeesan
5.M.Ulaganathan
6.V.Balabaskaran
7.V.Thanikachalam
8.G.Sampath
9.S.Kaliappan
10.B.Venkataraman
11.R.Thangavelu
12.T.Ramachandran
13.M.Sahabudeen
14.P.Balakrishnan
15.Narasimhalu
16.A.C.Rajasekaran
17.K.Krishnan
(RR4 to 17 impleaded as RR3 to 16 as per orders dated 12.9.2007 and 20.9.2007 in MP Nos.1, 2, 3 & 4/2007 in WP No.25608/2006) .. Respondents 3 to 16 in WP 25608/06

18.The Deputy Director of Health Services
Dindigul .. 3rd Respondent in WP 9185/2007

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WP 2249/2006 filed under Article 226 of the Constitution of India praying for a writ of mandamus directing the second respondent to include the names of only those Health Inspectors Grade I, who have passed Sanitary Inspectors Course Examination, including the petitioners herein, in the panel for the year 2005-2006 for promotion as Block Health Supervisor and to desist from including the names of those persons who have not passed the Sanitary Inspectors' Certificate Course Examination in the panel for the above post.

WP 10807/2006 filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus to call for the records pursuant to the impugned panel issued by the 2nd respondent in Proceeding R.No.120561/MP2/SI/2005 dated 12.11.2005 and quash the same and consequently direct the respondents to prepare a fresh panel including the qualified Health Inspectors for promotion to the post of Block Health Supervisors and accordingly promote them.

WP 17550/2006 filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus to call for the entire records relating to G.O.Ms.593 Health & Family Welfare (N2) Department dated 11.9.1995 of the second respondent and to quash the same as it relates to clause "All Multipurpose Health Supervisors as and when they complete 20 years of service by upgrading the post they hold automatically" as null and void and unconstitutional and direct the respondents to implement the G.O. Ms.1507 Health Indian Medicine and Homeopathy and Family Welfare Department, dated 16.8.1989.

WP Nos.25608/2006 and 8987 and 8988/2007 filed under Article 226 of the Constitution of India praying for a writ of mandamus to forbear the respondents from drawal of panel for the post of Block Health Supervisor by including the unqualified persons who have been promoted as Health Inspector Grade I on up gradation of post as per G.O.Ms.No.593 Health and Family Welfare Department dated 11.9.95 contrary to the Public Health Subordinate Service Rules as well as Adhoc Rules framed in G.O.Ms.No.1507 Health, Indian Medicine, Homeopathy and Family Welfare Department dated 16.8.89 and further direct the respondents to draw the panel for the post of Block Health Supervisor with eligible persons having requisite qualification as per the Rules and to effect promotions accordingly.

WP.No.8987 and 8988 of 2007 filed under Article 226 of the Constitution of India praying for a writ of mandamus direction in the nature of writ for bearing the respondents from drawal of panel for the post of Block Health Supervisor by the including the name of the unqualified person who have been promoted to the post of Health Inspector Grade I on upgradation of post as per G.O.Ms.No.593 Health and Family Welfare Department dated 11.09.95 contrary to the Tamil Nadu Public Health Subordinate Service Rules as well as Adhoe Rules framed in G.O.Ms.No.1507 Health Indian Medicines Homeopathy and Family Welfare Department dated 16.08.89 and further direct the respondent to draw the panel for the post of Block Health Supervisor with eligible persons having requisite qualification as per the Rules and to effect promotions accordingly.

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WP 9185/2007 filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus to quash the order of the 1st respondent in G.O.Ms.No.593, Health and Family Welfare (N2) Department, dated 11.9.1995 and direct the respondent to promote those employees with full qualification as prescribed under the Rules before absorption of unqualified hands as Health Inspector Grade I.

For Petitioners : Mr.M.Ravi in WP 2249/2006

Mr.S.M.Subramaniam
in WP 10807/2006

Mr.AR.L.Sundaresan
Senior Counsel for
Mr.M.Gnanasekar in
WP Nos.17550/06 & 9185/07

Mr.Venkatramani
Senior Counsel
for Mr.S.Vijayan in
WP 25608/2006

Mr.R.N.Amarnath in
WP 8987 and 8988/2007

For Respondents : Mr.G.Sankaran
Special Government Pleader
for RR1 and 2 in all WPs

Mr.R.Muthukannu for RR3 to
13 in WP 25608/2006

Mr.N.Thiagarajan
Senior Counsel
for Mr.R.Lakshminarayanan
for RR14 to 16 in
WP 25608/2006

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COMMON ORDER

This order shall govern the above writ petitions seven in number. All these writ petitions concentrate on challenging G.O.Ms.No.593 Health and Family Welfare (N2) Department, dated 11.9.1995, as one contrary to the Rules framed in G.O.Ms.No.1507 Health, Indian Medicine, Homeopathy and Family Welfare Department, dated 16.8.89, and consequentially no further panel could be prepared contrary to the Rules already in existence.

2.The affidavits in support of all the petitions are perused and the counter affidavit filed by the State is also perused. The Court heard the learned Counsel on all sides.

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3.The following would emerge as facts admitted:

(a) The Government passed an order in G.O.Ms.No.352, Health and Family Welfare Department, dated 9.3.1974, categorizing the posts relating to Health and Family Planning by rationalisation of the posts into four categories for facilitating fixation of scale of pay and for implementation of II Pay Commission. By the said G.O., the post of Laboratory Assistant (Malaria) was re-designated as Laboratory Attendant Grade III, and the post of Senior Laboratory Assistant (Malaria) was re-designated as Laboratory Attendant Grade II. Following the said G.O., the next G.O. came to be passed in G.O.Ms.No.110, Health and Family Planning Department, on 19.7.1977, whereby the existing Rules were amended by which the feeder category for the post of Health Inspector was amended as Laboratory Attendant Grade II, Laboratory Attendant Grade III and Field Assistant. In the year 1982, the Health Department issued G.O.Ms.No.1936 introducing Multipurpose Health Workers Scheme by which the Basic Health Workers and Vaccinators, working in various uni purpose scheme, have been absorbed as Multipurpose Health Workers. Though the scheme was introduced in the year 1982, it was implemented with effect from 4.11.1988. Following the same, on 16.8.1989, G.O.Ms.No.1507 Health, Indian Medicines, Homeopathy and Family Welfare Department, was issued framing Adhoc Rules for Multipurpose Health Workers Scheme which prescribes Sanitary Inspector Course Certificate or long term Multipurpose Health Workers Training Course Certificate as requisite qualification for appointment to the post of Health Inspector. Subsequently, the Government issued orders in G.O.Ms.No.185 on 5.5.1998, amending the Adhoc Rules framed in G.O.Ms.No.1507 referred to above, by which the post of Laboratory Assistant (Malaria) was included as one of the feeder category for promotion to the post of Health Inspector Grade I under Multipurpose Health Workers Scheme.

(b) While the matter stood thus, the impugned G.O. came to be passed in the year 1995 that was on 11.9.1995, in G.O.Ms.No.593, Health and Family Welfare Department, by which the Multipurpose Health Assistants who have been absorbed from various uni purpose Scheme, were given promotion as Multipurpose Health Supervisor (Health Inspector Grade I) as and when they complete 20 years of service, on up gradation of the post automatically. Thereafter, G.O.Ms.782, Health and Family Welfare Department, dated 20.12.1995 was passed amending the Rules by which the post of Multipurpose Health Worker was re-designated as Health Inspector Grade II and the post of Multipurpose Health Supervisor was re-designated as Health Inspector Grade I. On 28.5.2002, the Government issued a clarification letter distinguishing the promotion without qualification on up gradation as per G.O.593 dated 11.9.1995, and regular promotion with qualification for the persons regularly appointed as per the Rules issued in G.O.Ms.No.1507 dated 16.8.1989. The G.O.Ms.No.154 Health and Family Welfare Department, which was made on 11.3.2004, would stipulate that Block Extension Educator who got merged with the Multipurpose Health Workers Scheme, can be promoted as Block Health Supervisor only if they possess requisite qualification for the post of Sanitary Inspector namely Sanitary Inspector Course Certificate. Under the circumstances, G.O.593 and the amended Rules thereon came to be challenged first before the Tamilnadu Administrative Tribunal in the year 1995 itself which cases have been subsequently transferred to this Court and taken on file as writ petitions along with the other writ petitions.

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4.As could be seen, all the writ petitions mainly concentrate in attacking the G.O.Ms.No.593 as one bad and invalid since it has been issued only on the administrative instructions and they could not supersede or supplant the original G.O. by which the Multipurpose Health Workers Scheme has been brought into force. Apart from that, the panel issued by the second respondent for the year 2005-2006 for promotion as Block Health Supervisor is also challenged.

5.Inter alia, the learned Counsel appearing for the petitioners, would submit that the Government has passed the impugned G.O.593 by which the Multipurpose Health Assistants have been absorbed from various uni purpose Scheme, and they were given promotion as Multipurpose Health Supervisors (Health Inspector Grade I) if they complete 20 years of service by upgrading the post they held automatically; that from the very reading of the order, it would be quite clear that the unqualified Multipurpose Health Assistants who have completed 20 years of service, were given promotion as Health Inspector Grade I on up gradation of the post; that the said order came to be passed taking into consideration the fact that the Basic Health Workers, Vaccinators and Cholera Workers were in the category of Multipurpose Health Assistant, who could not get promotion for several years as the post of Multipurpose Health Supervisor was reduced in number due to the population ratio; and that under the circumstances, the post of Multipurpose Health Worker itself was upgraded as Multipurpose Health Supervisor as a measure of concession on the ground of sympathy and even without considering the fact that they were not having requisite qualification to hold the post of Multipurpose Health Supervisor (Health Inspector Grade I).

6.The learned Counsel would further submit that the order came to be passed on the ground of sympathy as one time measurement by upgrading the post itself meaning thereby that they should be allowed to work in the post till their retirement; that in the order, it is stated that persons who have crossed 50 years of age without getting promotion, were promoted on up gradation even without requisite qualification as per the Rules, and thus, it would be quite clear that the persons who were not possessing Sanitary Inspector Course Certificate, were given promotion as Multipurpose Health Supervisor (Health Inspector Grade I); that further, they would add that the persons who were upgraded as Health Inspector Grade I as per the impugned G.O., have been allowed to work at Health Sub Centre Level; and that since they have been given promotion on up gradation of the post without qualification and further they were given equal salary in the promoted post, though they are allowed to work in the Sub Centre Level, it became necessary to challenge the G.O.Ms.No.593.

7.The learned Counsel would further add that the persons who have now been given promotion pursuant to the G.O.593, should not be allowed to claim any further promotion for want of qualification; that it has been made clear by the Government by a letter dated 28.5.2002, that the promotion by way of up gradation as referred in G.O.593, was applicable only to the absorbed unipurpose Helth Assistant as Multipurpose Health Assistant; that it is not applicable to directly recruited Multipurpose Health Assistants appointed as per Adhoc Rules issued in 1989, and hence, it would be quite clear that the up gradation of the post as per G.O.593

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has been categorized as single unit without being merged with regularly appointed Multipurpose Health Assistant/Health Inspector Grade II with requisite qualification as per Adhoc Rules.

8.It is the further contention of the learned Counsel that the educational qualification and other qualification as prescribed by the Rules, should strictly be followed in respect of the persons appointed as per the Rules; that all these would make it clear that the up gradation of the post as per G.O.593 cannot be equated with the regularly appointed persons who have been promoted as per the Rules; that as per the amended Rules, it is clear that the Laboratory Assistants (Malaria) are entitled to be promoted to the post of the Health Inspector Grade I, only if they possess Sanitary Inspector Course Certificate; that under the circumstances, for promotion to the post of Health Inspector Grade I, the requisite qualification as prescribed in the Rules, should be strictly followed without any deviation; that now, all the attempts are being made for making further promotion from the post of Health Inspector Grade I to the post of Block Health Supervisor; that once it is sympathetically considered and promotion has been given, the same sympathy should not continue; that if allowed, the rights of the persons who are entitled to have the regular promotion and who are having the requisite qualification, would be jeopardized; that under the circumstances, it should not be allowed to supersede, and hence, it became necessary to challenge the impugned G.O.

9.The learned Counsel would further add that in the instant case, the second respondent is taking all steps for preparation of a panel for 2005-2006 for promotion to the post of Block Health Supervisor from the post of Health Inspector Grade I, in which the persons who have been upgraded along with the post without requisite qualification as per the impugned G.O., have been included; that if the same is allowed to go, the petitioners and others who are all waiting for the chance and who are having requisite qualification, will lose their chance, and their rights would also be jeopardized; that there are qualified persons who have been regularly promoted like the petitioners, are longing for further promotion to the post of Block Health Supervisor as per the Rules; that the first part of the G.O.593 which is actually based on the administrative instructions, cannot supersede all the earlier Rules which have come into existence in 1989 itself and amended Rules thereafter, under Article 309 of the Constitution; that in such circumstances, it cannot supersede or supplant the original G.O.; that it is also clear from the Counter filed by the State before the Tamil Nadu Administrative Tribunal that only the request of the Association was considered, and it was sympathetically done, and they have been given promotion as Health Inspector Grade I; that this would clearly indicate that it is not the recognition of the rights of those persons, who did not have the requisite qualification; that only on the ground of sympathy, their promotion was given; that this sympathy should not be continued so as to allow them to march forward to get into the post of the Block Health Supervisor, and under the circumstances, the G.O. has got to be struck down, and the panel to be prepared, be restrained.

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10.Contrary to the above contentions, the learned Counsel appearing for the respondents 3 to 16 in WP 25608/2006, in support of the G.O. and the amended Rules thereon and also the preparation of the panel which is under challenge, would contend that the State was perfectly correct in passing the G.O.; that from the impugned G.O., it would be quite evident that it would be in furtherance of the original G.O. Passed; that evidence could be traced in that regard; that it could be well seen that it is made under Article 309 of the Constitution; that at no stretch of imagination, it could be considered as administrative instructions; that in order to coordinate, streamline and channelize the duties and functions of the staff in the Public Health Department as to be purposeful and useful to public, in 1988 all persons who have been appointed and inducted as Basic Health Workers, Vaccinators and Cholera Workers, have been designated into one category and cadre as Multipurpose Health Assistant in which category all these respondents were absorbed and they have been continuing their work as such; that all have been given promotion from 1995 as Health Inspector Grade I; that once the promotion has been given from 1995 and the persons like these respondents have got vested right, the same cannot now be challenged; that now the challenge is made after a period from 1995 to 2007; that hundreds of persons have actually been promoted and hundreds have actually retired and have got pensionary benefits; that if this G.O. is to be struck down, as put forth by the petitioners' side, it would be nothing but invasion of the vested rights of these respondents; that the same cannot be done since number of persons were promoted, and they also retired; that apart from that, it is not correct on the part of the petitioners to state that they are not qualified; that according to the petitioners, the only requirement was the possession of Sanitary Inspector Course Certificate; that it is pertinent to point out that these respondents and the persons alike them have been in the field for number of decades; that they have acquired vast experience; that the same should have been considered by the Government; that the Sanitary Inspector Course Examination was stopped from 1983, and under the circumstances, they could not undergo the course and obtain the certificate; that these respondents have actually been promoted from Grade II to Grade I from 1995 onwards and it was in recognition of their service in the field work.

11.Added further the learned Counsel that at no stretch of imagination, the petitioners can say that they are disqualified; that merely because the petitioners have got a certificate by undergoing the course, it cannot be stated that they are better placed; but, the inspection of their Service Records would clearly indicate that many of them did not have the full service or experience; that under the circumstances, it was to be recognised; that accordingly, the Government in recognition of the same have done so; that it is farce to state that the G.O. came to be passed sympathetically; but, it was only in recognition of their service and experience; that under the circumstances, once they have been promoted as Health Inspectors Grade I, they are to be equated to others; that the petitioners are desirous of getting their promotion by seniority; that the persons who are equally placed along with these respondents, are also to be promoted as Block Health Supervisors; that there cannot be any legal impediment in making so, and under the circumstances, the petitions do not carry any merit, and they are liable to be dismissed.

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12.The Court heard the learned Special Government Pleader for the State on the above contentions. He made his sincere attempt in supporting the G.O. and the amendment made thereon, and also the panel to be prepared as one in accordance with law and would submit that the petitions are to be dismissed.

13.The Court paid its anxious consideration on the submissions made.

14.As could be seen above, the petitioners have challenged the G.O.Ms.No.593, Health and Family Welfare Department, dated 11.9.1995. Originally, in 1982, a Scheme called Multipurpose Health Workers Scheme, was introduced. But, it was given implementation with effect from 4.11.1988. The Adhoc Rules were also framed in G.O.Ms.No.1507 on 16.8.1989. At the outset, it is to be pointed out that either the G.O.1936 introducing the Multipurpose Health Workers Scheme whereby the Basic Health Workers and Vaccinators working in various uni purpose scheme, were absorbed as Multipurpose Health Workers, or the subsequent G.O.185 whereby the Adhoc Rules issued in G.O.1507, were amended by which the post of Laboratory Assistant (Malaria) was included as one of the feeder category for promotion to the post of Health Inspector Grade I, is not challenged before this Court. By the introduction of the Multipurpose Health Workers Scheme and by the amendment of the Rules, now the persons who are all the respondents 3 to 16 in WP No.25608 of 2006, have been absorbed into the regular scheme, and they have been given promotion. As such the promotion commenced in the year 1995 pursuant to which they have been made as Health Inspector Grade I. Now, the challenge is made to the G.O.593 by which the post of Multipurpose Health Supervisors who are the Health Inspectors Grade I, is given to the persons, if they complete 20 years of service, on up gradation of the post automatically, and thus, the said respondents have been promoted. Following the same, the amendment Rules have also been made in December 1995. As on today, it cannot be disputed that by the application of the G.O.593, hundreds of persons like the above respondents 3 to 16, were promoted and they have been working. That apart, hundreds of persons have actually retired.

15.The first contention put forth by the petitioners' side that those persons do not have the requisite qualification, and as a measure of concession only and on the ground of sympathy, they were given promotion, has got to be considered. Even from the counter filed by the State, it could be seen that as a measure of concession and on the ground of sympathy and also in order to remove the stagnation of promotion for several years, it was considered. Though the words used are sympathy and measure of concession, it cannot be forgotten that the fact that the above respondents 3 to 16 have been in service for decades, should have been taken into consideration by the Government. Now, at this juncture, it is to be pointed out that this concession would not have been given, or the sympathy would not have been shown if their services for number of decades and experience in the field were not taken into account. In such circumstances, it cannot be stated that the sympathy was one misplaced, or the concession should not have been given at that time. Needless to say that in view of the stagnation of promotion of these persons for decades and also in order to remove the stagnation, taking into consideration their experience in the field for more than a decade, the State thought it fit to pass G.O.593 whereby it has given the measure.

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16.The other contention that they did not have requisite qualification and hence, they should not have been given promotion cannot be accepted at this stage for the simple reason that the G.O. came to be passed in the year 1995, which is also an admitted position. Though it was challenged before the Tamil Nadu Administrative Tribunal and number of writ petitions have been filed before this Court, pending the same, hundreds of persons have actually been promoted from Grade II to Grade I, and hundreds have actually retired, and they got pensionary benefits also. Under the circumstances, this Court is of the considered opinion that there is no meaning in contending that the G.O.593, though it has been in existence for more than a decade, and benefits have already been accrued, and they have been enjoying the benefits of the same, has got to be set aside. This Court is unable to agree with the said contention put forth by the petitioners' side.

17.The next contention put forth by the petitioners' side is that it is only on the administrative instructions; that it is not in exercise of the powers under Article 309 of the Constitution; and that it is inconsistent to the original G.O. in 1989 and the amended Rules wherein it is clearly referred as in exercise of the powers under Article 309 of the Constitution; but, it is not so in the case of G.O.593. It is true; but, it does not mean that following the original G.O., the impugned G.O. came to be passed. Hence, it is not a question of supplanting or superseding the same; but, it is only a measure given. It can be well stated that it is supplemental in character. Further, the G.O.593 has given relaxation which, in the opinion of this Court, cannot in any way be unreasonable or inconsistent to the original G.O. Under the circumstances, that contention cannot be countenanced at all.

18.As could be seen, the entire case of the petitioners was that the above respondents 3 to 16 are not qualified since they do not have the Sanitary Inspector Course Certificate. Except this, this Court is unable to notice anything in the entire case. What are all urged is that they did not undergo the said course, and the Sanitary Inspector Course Certificate has not been issued to them. Originally, by the G.O. of 1989 and the subsequent G.O. Of 1992, it was made a necessity that they should have the certificate; but the Government have taken into consideration their experience in the field and have decided to give a measure of concession, and accordingly, it is given. Now, at this juncture, as far as the first part of the G.O. to be struck down, according to the petitioners, is concerned, this Court is unable to agree with the case of the petitioners.

19.As regards the preparation of the panel is concerned, this Court is able to see sufficient force in the contention put forth by the petitioners' side. When the original applications came to be filed before the Tribunal, the State filed a reply affidavit which reads as follows:

> "The Basic Health Workers Association represented that though they have completed 25 years of service and crossed 50 years of age, they could not get promotion as they do not possess Sanitary Inspector Course qualification and due to excess cadre strength of Multipurpose Health Supervisor. Considering their request

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sympathetically the Government have issued orders in G.O.Ms.No.593, Health, dated 11.9.95 to promote all Multipurpose Health Assistants who have completed 20 years of service as Health Inspector Grade I."

20.From the reading of the above reply given, it would be quite clear that there were requests made by them, and the persons who made requests, did not have the Sanitary Inspector Course qualification; but, they have been working for more than 25 years, and hence, it was to be considered. Taking into consideration the request of the said Association coupled with the fact of stagnation of promotion for decades, the State have given promotion to them as a concessional measure at that stage. Even from the reading of the G.O. under challenge and also the counter filed by the State referred to above, it would be abundantly clear that the respondents 3 to 16 who were given promotion pursuant to G.O.593, and the persons alike them were promoted by way of concession and not in recognition of their rights, but to remove the stagnation of promotion, though they did not have the necessary certificates or the qualification. On the contrary, the persons who are before this Court namely the petitioners herein, have got necessary certificates for promotion to the post of Block Health Supervisor. Under the circumstances, the persons who did not have proper qualification as one contemplated in the G.O. of 1989, though they were given promotion as above, cannot be allowed to equate themselves with the persons like the petitioners herein, for getting further promotion.

21.Now, at this juncture, it would be more apt and appropriate to point out that the clarification was issued by the State by a letter dated 28.5.2002, distinguishing the promotion without qualification on up gradation as per G.O.593 and regular promotion with qualification for the persons regularly appointed as per the Rules issued in G.O.1507 of the year 1989, and hence, the persons promoted on up gradation as per G.O.593 cannot be merged with the regularly promoted persons as per the Rules. Even though there was a promotion given to the persons alike the respondents 3 to 16 as per G.O.593 of the year 1995, the Government made it clear by the said clarification letter distinguishing both the categories, and thus, it would be quite clear that the persons alike the respondents 3 to 16 who do not have the certificates, cannot come forward to compare with the petitioners who have got necessary qualification, in the guise of G.O.593 so as to have further promotion to the post of Block Health Supervisor. Under the circumstances, this Court is of the considered opinion that the respondents 3 to 16 and the persons placed alike, cannot be allowed to take advantage of one time concessional benefit given to them pursuant to G.O.593, to ask further promotion to the post of Block Health Supervisors, equating themselves with those who have got the requisite qualification by holding necessary certificates. But, the respondents 3 to 16 and persons alike them can be allowed to continue in the present post, but cannot be considered for further promotion to the post of Block Health Supervisors.

22.As regards the G.O.Ms.No.593, for the reasons stated above, this Court is unable to see any reason to strike it down. But, at the same time, on the strength of the said G.O., the State cannot be allowed to prepare a panel including the respondents 3 to 16 or persons alike them,

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for promotion to the post of Block Health Supervisor. Accordingly, the State is restrained from preparing such a panel. However, it is made clear that such a panel if prepared, should not be given effect. Accordingly, all these writ petitions are disposed of. No costs. Consequently, connected WPMPs and MPs are closed.

21.11.2007

These Petitions having been set down on this day 20.12.2007 for being mentioned pursuant to the order of this Court dated 21.11.2007 and made herein in presence of aforesaid Advocates on either side the Court made the following order:-

These matters are posted today for "Being mentioned" at the instance of the learned senior counsel appearing for the respondents.

2. Learned senior counsel appearing for the respondents brought to the notice of this Court that on an earlier occasion, when the order was passed on merits on 21.11.2007 in W.P.Nos.2249, 10807, 17550 and 25608 of 2006 and 8987, 8988 and 9185 of 2007, in paragraph 22, instead of stating that the State cannot be allowed to prepare a panel including the respondents 3 to 15 or persons alike them for promotion to the post of Block Health Supervisor, it is stated that since the 16th respondent in W.P.No.25608 of 2006 by name A.C. Rajasekaran has already been qualified, naturally his name be included in the panel and hence the name of the 16th respondent has to be deleted in the aforesaid paragraph.

3. Accordingly, paragraph 22 of the order dated 21.11.2007 is modified to the following effect:

"22. As regards the G.O.Ms.No.593, for the reasons stated above, this Court is unable to see any reason to strike it down. But, at the same time, on the strength of the said G.O.the State cannot be allowed to prepare a panel including the respondents 3 to 15 or persons alike them, for promotion to the post of Block Health Supervisor. Accordingly, the State is restrained from preparing such a panel. However, it is made clear that such a panel if prepared, should not be given effect. Accordingly all these writ petitions are disposed of. No costs. Consequently, connected WPMPs and Mps are closed."

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Sd/
Asst.Registrar

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Sub Asst.Registrar

nsv/

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To:

1.The Secretary to Government
Health and Family Welfare
Department
Fort St. George, Chennai 600 009.

2.The Director of Public Health
and Preventive Medicine
DMS Compound
Chennai 600 006.

3. The Deputy Director of Health Services,
Dindigul.

1 cc To M/s.M.Ravi, Advocate, SR.69178.
2 cc To The Government Pleader, SR.69110 and 69108.
1 cc To Mr.S.M.Subramanian, Advocate, SR.68896.
1 cc To Mr.R.Muthukannu, Advocate, SR.68780.
2 cc To M/s.R.N.Amarnath, Advocate, SR.69344.
1 cc To M/s.N.Gnanasekar, Advocate, SR.68959.
1 cc to Mr.R. Lakshmi Narayanan, Advocate, Sr. 75959

WP Nos.2249, 10807,
17550 and 25608/2006 and
8987, 8988 and 9185/2007

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